



Elbert County Environmental Alliance (ECEA)

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Re: HB22-1104 "Powerline Trails Act"

To our Colorado Legislators:

The Elbert County Environmental Alliance has (4) major concerns regarding HB22-1104 (HB22-1104 sections cited, then ECEA comments):

1.

24 **33-45-103. Powerline trails - written contracts - informational**
25 **resources - coordination with division of parks and wildlife.** (1) A
26 TRANSMISSION PROVIDER, AS THE OWNER, OCCUPANT, OR LESSEE OF A
27 TRANSMISSION CORRIDOR OR THE HOLDER OF AN EASEMENT OR

1 RIGHT-OF-WAY COVERING A TRANSMISSION CORRIDOR, MAY ENTER INTO
2 A WRITTEN CONTRACT WITH A PUBLIC ENTITY OR PRIVATE LANDOWNER TO
3 CONSTRUCT AND MAINTAIN A POWERLINE TRAIL COVERING ALL OR SOME
4 OF THE TRANSMISSION CORRIDOR.

ECEA Comment

The above is unclear. If the utility company has already entered into an agreement with the private property owner for a utility easement/right-of-way, does that, in fact, then grant the right to build a "Powerline Trail" with or without the private property owner's permission? In

our opinion, it needs to be more clearly stipulated that the landowner can refuse the construction of the "Powerline Trail" on their property. Right of way is NOT the same thing as a "Powerline Trail".

2.

21 (7) (a) "RECREATIONAL PURPOSE" INCLUDES WALKING, RUNNING,
22 BICYCLING, CLASS 1 OR CLASS 2 ELECTRICAL ASSISTED BICYCLING,
23 EQUESTRIAN ACTIVITIES, USE OF ELECTRIC SCOOTERS, CROSS-COUNTRY
24 SKIING, OR OTHER SIMILAR USES.

25 (b) "RECREATIONAL PURPOSE" DOES NOT INCLUDE THE USE OF A
26 MOTOR VEHICLE OR OTHER SELF-PROPELLED VEHICLE THAT IS NOT AN
27 ELECTRICAL ASSISTED BICYCLE, ELECTRIC SCOOTER, LOW-POWER

1 SCOOTER, OR MOTORIZED WHEELCHAIR, AS THOSE TERMS ARE DEFINED IN
2 SECTION 42-1-102.

ECEA Comment

While the above restrictions of use may be appropriate in a more suburban setting, the list of activities may be extremely harmful to those participants in a more rural setting due to either wildlife on the hunt, in breeding season or in general foraging. The same can be said for livestock which have free range on landowners' property. Additionally, strangers walking or biking through these areas may cause a disruption to these animals' habitat. Users of the trails will also cause environmental damage to the private property, i.e. trampling down the vegetation, causing rain runoff which creates erosion, forcing the landowner to practice erosion mitigation at great cost. Gates being left open would allow livestock to intermingle with neighbors' livestock, and there would be nothing to prevent trail users from leaving the trail and causing further damage to the property.

3.

7 (a) LIMITS THE PROTECTIONS PROVIDED TO A LANDOWNER UNDER
8 SECTION 13-21-115 AND ARTICLE 41 OF THIS TITLE 33;

Section 13-21-115 reads as follows:

(3) (a) A trespasser may recover only for damages willfully or deliberately caused by the landowner.

(b) A licensee may recover only for damages caused:

(I) By the landowner's unreasonable failure to exercise reasonable care with respect to dangers created by the landowner of which the landowner actually knew; or

(II) By the landowner's unreasonable failure to warn of dangers not created by the landowner which are not ordinarily present on property of the type involved and of which the landowner actually knew.

(c) (I) Except as otherwise provided in subparagraph (II) of this paragraph (c), an invitee may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which he actually knew or should have known.

(II) If the landowner's real property is classified for property tax purposes as agricultural land or vacant land, an invitee may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which he actually knew.

(3.5) It is the intent of the general assembly in enacting the provisions of subsection (3) of this section that the circumstances under which a licensee may recover include all of the circumstances under which a trespasser could recover and that the circumstances under which an invitee may recover include all of the circumstances under which a trespasser or a licensee could recover.

(4) In any action to which this section applies, the judge shall determine whether the plaintiff is a trespasser, a licensee, or an invitee, in accordance with the definitions set forth in subsection (5) of this section. If two or more landowners are parties defendant to the action, the judge shall determine the application of this section to each such landowner. The issues of liability and damages in any such action shall be determined by the jury or, if there is no jury, by the judge.

(5) As used in this section:

(a) "Invitee" means a person who enters or remains on the land of another to transact business in which the parties are mutually interested or who enters or remains on such land in response to the landowner's express or implied representation that the public is requested, expected, or intended to enter or remain.

(b) "Licensee" means a person who enters or remains on the land of another for the licensee's own convenience or to advance his own interests, pursuant to the landowner's permission or consent. "Licensee" includes a social guest.

(c) "Trespasser" means a person who enters or remains on the land of another without the landowner's consent.

(6) If any provision of this section is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the section shall be deemed valid.

ECEA Comment

The above sections, 'b' (I) & (II) and section 'c' (I) & (II), is create an unreasonable limitation of liability when it comes to open range grazing of livestock and the potential for wildlife present on the same property. Livestock operations are based on the scale of use of open range management practices and do not require constant supervision of livestock for the purposes of protecting the general public. This provision is unrealistic and untenable.

4.

14 (d) REQUIRES A PUBLIC OR PRIVATE LANDOWNER WHOSE
15 PROPERTY IS ADJACENT TO OR INCLUSIVE OF A TRANSMISSION CORRIDOR
16 TO ALLOW PUBLIC ACCESS TO ANY PORTION OF THE LANDOWNER'S
17 PROPERTY;

ECEA Comment

Again, this provision is unrealistic in a rural setting in that if a transmission corridor is in a land locked situation, the provisions of this bill can force an adjacent landowner to provide a right-of-way to allow public access to the "Powerline Trail", and also submit to all the limitations of liability within this bill without any reimbursement due to the fact that the landowner has not entered into an agreement with the power transmission company. His only "crime" is that he has land adjacent to the existing transmission corridor right-of-way. This would be detrimental to the landowners' use and enjoyment of their land and their privacy and would pose additional costs/expense.

In summary, the ECEA is opposed to HB22-1104 due to the above concerns. These powerline trails would be completely inappropriate, crossing private landowner properties, especially if these properties are being used for livestock or agricultural purposes.

Signed,

Board of Directors
Elbert County Environmental Alliance